

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6156

PETITION OF MOHMOUD ABULHAWA
(Hearing held October 11, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, December 21, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-9.44(b)(1). The petitioner proposes the construction of a one-story addition/sunroom that requires a variance of 13.40 feet as it is within 6.60 feet of the side lot line. The required side lot line setback is twenty (20) feet.

John McFadden, an architect, represented the petitioner at the public hearing.

The subject property is Lot 15, Block A, Gues Addition to Woodfield Subdivision, located at 8724 Hawkins Creamery Road, Gaithersburg, Maryland, 20882, in the RC Zone (Tax Account No. 00923331).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 23.9 x 18.2 foot one-story addition.
2. Mr. McFadden testified that the subject property is a pipe-stemmed lot that is 2.317 acres. Mr. McFadden testified that the existing geotechnical and topographical characteristics of the subject property make it unique. Mr. McFadden testified that the geotechnical and topographic characteristics of the property required that the buildable footprint of the house be located in the southwest quadrant of the lot and that these characteristics limited the location of the house and required that it be oriented in an unusual way. See Exhibit Nos. 4(a) [site plan] and 12 [survey].

3. The petitioner testified that when his house was built the footings for the sunroom were put in and that he believed when he was ready to construct the sunroom, it could be built. The petitioner testified that his house is located on a hill, which is the steepest section of the lot. The petitioner testified that the addition could not be located in the southeastern side yard because of an existing well located in this area of the lot.
4. Mr. McFadden testified that the existing groundwater table characteristics as well as the location of the septic field also limit the use of the subject property. Mr. Fadden testified that although the petitioner's lot is larger than the neighboring lots, the neighboring lots have a much flatter topography than the subject property. Mr. McFadden testified that the sunroom is existing and that it was built by a contractor without a building permit. See Exhibit Nos. 7 [zoning vicinity map] and 13 [topographic worksheet and plat study].

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot is one of the largest in the immediate neighborhood and that the topographical and geotechnical conditions of the subject property are characteristics that are shared with the neighboring properties. The Board notes that for purposes of evaluation for the grant of a variance that uniqueness or peculiarity does not refer to the extent of the improvements on the property or the location of the house. (*Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 310 (1995)).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 13.40 feet from the required twenty (20) foot side lot line setback for the construction of a one-story addition/sunroom is denied.

The Board adopted the following Resolution:

Board member Wendell M. Holloway was necessarily absent and did not participate in this Resolution. On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 21st day of December, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

